

**SB0042**



**96TH GENERAL ASSEMBLY**

**State of Illinois**

**2009 and 2010**

**SB0042**

Introduced 1/30/2009, by Sen. John J. Millner

**SYNOPSIS AS INTRODUCED:**

405 ILCS 5/3-800  
725 ILCS 120/6

from Ch. 91 1/2, par. 3-800  
from Ch. 38, par. 1406

Amends the Mental Health and Developmental Disabilities Code and the Rights of Crime Victims and Witnesses Act. Provides that if a criminal defendant has been found not guilty by reason of insanity of a violent crime and a hearing has been ordered by the court under the Mental Health and Developmental Disabilities Code to determine if the defendant is: (1) in need of mental health services on an inpatient basis; (2) in need of mental health services on an outpatient basis; or (3) not in need of mental health services, the victim or the victim's spouse, guardian, parent, grandparent, or other immediate family or household member shall have the right to present a victim's impact statement at the commitment hearing.

LRB096 00916 RLC 10923 b

FISCAL NOTE ACT  
MAY APPLY

**A BILL FOR**

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental  
5 Disabilities Code is amended by changing Section 3-800 as  
6 follows:

7 (405 ILCS 5/3-800) (from Ch. 91 1/2, par. 3-800)

8 Sec. 3-800. (a) Unless otherwise indicated, court hearings  
9 under this Chapter shall be held pursuant to this Article.  
10 Hearings shall be held in such quarters as the court directs.  
11 To the extent practical, hearings shall be held in the mental  
12 health facility where the respondent is hospitalized. Any party  
13 may request a change of venue or transfer to any other county  
14 because of the convenience of parties or witnesses or the  
15 condition of the respondent. The respondent may request to have  
16 the proceedings transferred to the county of his residence.

17 (b) If the court grants a continuance on its own motion or  
18 upon the motion of one of the parties, the respondent may  
19 continue to be detained pending further order of the court.  
20 Such continuance shall not extend beyond 15 days except to the  
21 extent that continuances are requested by the respondent.

22 (c) Court hearings under this Chapter, including hearings  
23 under Section 2-107.1, shall be open to the press and public

1 unless the respondent or some other party requests that they be  
2 closed. The court may also indicate its intention to close a  
3 hearing, including when it determines that the respondent may  
4 be unable to make a reasoned decision to request that the  
5 hearing be closed. A request that a hearing be closed shall be  
6 granted unless there is an objection to closing the hearing by  
7 a party or any other person. If an objection is made, the court  
8 shall not close the hearing unless, following a hearing, it  
9 determines that the patient's interest in having the hearing  
10 closed is compelling. The court shall support its determination  
11 with written findings of fact and conclusions of law. The court  
12 shall not close the hearing if the respondent objects to its  
13 closure. Whenever a court determines that a hearing shall be  
14 closed, access to the records of the hearing, including but not  
15 limited to transcripts and pleadings, shall be limited to the  
16 parties involved in the hearing, court personnel, and any  
17 person or agency providing mental health services that are the  
18 subject of the hearing. Access may also be granted, however,  
19 pursuant to the provisions of the Mental Health and  
20 Developmental Disabilities Confidentiality Act.

21 (d) The provisions of Section 6 of the Rights of Crime  
22 Victims and Witnesses Act shall apply if a criminal defendant  
23 has been found not guilty by reason of insanity of a violent  
24 crime and a hearing has been ordered by the court under this  
25 Code to determine if the defendant is: (1) in need of mental  
26 health services on an inpatient basis; (2) in need of mental

1 health services on an outpatient basis; or (3) not in need of  
2 mental health services.

3 (Source: P.A. 90-538, eff. 12-1-97.)

4 Section 10. The Rights of Crime Victims and Witnesses Act  
5 is amended by changing Section 6 as follows:

6 (725 ILCS 120/6) (from Ch. 38, par. 1406)

7 (Text of Section after amendment by P.A. 95-591)

8 Sec. 6. Rights to present victim impact statement.

9 (a) In any case where a defendant has been convicted of a  
10 violent crime or a juvenile has been adjudicated a delinquent  
11 for a violent crime and a victim of the violent crime or the  
12 victim's spouse, guardian, parent, grandparent, or other  
13 immediate family or household member is present in the  
14 courtroom at the time of the sentencing or the disposition  
15 hearing, the victim or his or her representative shall have the  
16 right and the victim's spouse, guardian, parent, grandparent,  
17 and other immediate family or household member upon his, her,  
18 or their request may be permitted by the court to address the  
19 court regarding the impact that the defendant's criminal  
20 conduct or the juvenile's delinquent conduct has had upon them  
21 and the victim. The court has discretion to determine the  
22 number of oral presentations of victim impact statements. Any  
23 impact statement must have been prepared in writing in  
24 conjunction with the Office of the State's Attorney prior to

1 the initial hearing or sentencing, before it can be presented  
2 orally or in writing at the sentencing hearing. In conjunction  
3 with the Office of the State's Attorney, a victim impact  
4 statement that is presented orally may be done so by the victim  
5 or the victim's spouse, guardian, parent, grandparent, or other  
6 immediate family or household member or his, her, or their  
7 representative. At the sentencing hearing, the prosecution may  
8 introduce that evidence either in its case in chief or in  
9 rebuttal. The court shall consider any impact statement  
10 admitted along with all other appropriate factors in  
11 determining the sentence of the defendant or disposition of  
12 such juvenile.

13 (a-5) In any case where a defendant has been found not  
14 guilty by reason of insanity of a violent crime and a hearing  
15 has been ordered by the court under the Mental Health and  
16 Developmental Disabilities Code to determine if the defendant  
17 is: (1) in need of mental health services on an inpatient  
18 basis; (2) in need of mental health services on an outpatient  
19 basis; or (3) not in need of mental health services and a  
20 victim of the violent crime or the victim's spouse, guardian,  
21 parent, grandparent, or other immediate family or household  
22 member is present in the courtroom at the time of the  
23 commitment hearing, the victim or his or her representative  
24 shall have the right and the victim's spouse, guardian, parent,  
25 grandparent, and other immediate family or household member  
26 upon his, her, or their request may be permitted by the court

1 to address the court regarding the impact that the defendant's  
2 criminal conduct has had upon them and the victim. The court  
3 has discretion to determine the number of oral presentations of  
4 victim impact statements. Any impact statement must have been  
5 prepared in writing in conjunction with the Office of the  
6 State's Attorney prior to the commitment hearing, before it can  
7 be presented orally or in writing at the commitment hearing. In  
8 conjunction with the Office of the State's Attorney, a victim  
9 impact statement that is presented orally may be done so by the  
10 victim or the victim's spouse, guardian, parent, grandparent,  
11 or other immediate family or household member or his, her, or  
12 their representative. At the commitment hearing, the State's  
13 Attorney may introduce that evidence either in its case in  
14 chief or in rebuttal. The court shall consider any impact  
15 statement admitted along with all other appropriate factors in  
16 determining whether the defendant is: (1) in need of mental  
17 health services on an inpatient basis; (2) in need of mental  
18 health services on an outpatient basis; or (3) not in need of  
19 mental health services.

20 (b) The crime victim has the right to prepare a victim  
21 impact statement and present it to the Office of the State's  
22 Attorney at any time during the proceedings. Any written victim  
23 impact statement submitted to the Office of the State's  
24 Attorney shall be considered by the court during its  
25 consideration of aggravation and mitigation in plea  
26 proceedings under Supreme Court Rule 402.

1           (c) This Section shall apply to any victims of a violent  
2 crime during any dispositional hearing under Section 5-705 of  
3 the Juvenile Court Act of 1987 which takes place pursuant to an  
4 adjudication or trial or plea of delinquency for any such  
5 offense.

6           (Source: P.A. 95-591, eff. 6-1-08.)